

IN THE UNITED STATES DISTRICT COURT  
FOR WESTERN DISTRICT OF TENNESSEE, MEMPHIS DIVISION

C. FRED DANIELS, as Trustee *ad Litem* )  
in substitution for Regions Bank dba )  
Regions Morgan Keegan Trust as trustee )  
for the JUANITA H. SCHAFFER )  
IRREVOCABLE TRUST; the TRUST )  
UNDER WILL OF MARY B. WELCH; )  
the TRUST UNDER LAST WILL AND )  
TESTAMENT OF J. S. COOPER FOR )  
BENEFIT OF CORINNE COOPER; the )  
TRUST UNDER WILL OF WILLIAM )  
THOMAS HARDISON, SR.; the TRUST )  
UNDER WILL OF HORACE SMALL )  
FOR BENEFIT OF ROGER SMALL; the )  
MAMIE C. HOWELL TRUST UNDER )  
AGREEMENT; the DAVID T. )  
UNDERWOOD, JR. REVOCABLE )  
TRUST; the TRUST FOR NOEL A. M. )  
GAYLOR UNDER LAST WILL AND )  
TESTAMENT OF ANN GAYLOR; the )  
TRUST UNDER WILL OF JESSE S. )  
COOPER FOR BENEFIT OF JUDITH )  
ANNE CARRAWAY; the SANDRA )  
CARR REVOCABLE TRUST UNDER )  
AGREEMENT; and for a CLASS OF )  
ALL SIMILARLY SITUATED TRUSTS )  
AND CUSTODIAL ACCOUNTS, )  
TOGETHER WITH THEIR )  
RESPECTIVE TRUSTEES, )  
REPRESENTATIVES, AND )  
FIDUCIARIES, )

Plaintiffs, )

vs. )

MORGAN ASSET MANAGEMENT, )  
INC.; MORGAN KEEGAN & )  
COMPANY, INC.; MK HOLDINGS, )  
INC.; REGIONS FINANCIAL )

Case No.: 2:09-cv-02800-SHM-cgc

**CORPORATION; JAMES C. KELSOE, )  
JR.; ALLEN B. MORGAN, JR.; J. )  
KENNETH ALDERMAN; BRIAN B. )  
SULLIVAN; JOSEPH C. WELLER; J. )  
THOMPSON WELLER; CHARLES D. )  
MAXWELL; MICHELE F. WOOD; )  
DAVID H. TANNEHILL; JOHN )  
BOSTON; CHARLIE A. MURRAY; )  
MATT R. SMITH; DOUG WILLIAMS; )  
GARY PARTRIDGE; JENNY JOHNS; )  
GUILLERMO R. ARAOZ; and )  
DEFENDANTS JOHN DOE ONE )  
through TWENTY, )  
)  
)  
)**

**Defendants.**

**MOTION AND MEMORANDUM  
FOR PERMISSION TO FILE  
SECOND AMENDED COMPLAINT**

Pursuant to Fed. R. Civ. P. 15(a)(2), the Plaintiffs respectfully move the Court for an Order allowing the attached Second Amended Complaint. This Motion is supported by the following grounds:

1. On April 7, 2010, after the Plaintiffs filed (on March 26) their Response to the Defendants' Motions To Dismiss, the following were filed:

(a) The Director of The Alabama Securities Commission, the Commissioner of the Kentucky Department of Financial Institutions, the Assistant Secretary of State for the Mississippi Secretary of State Securities and Charities Division, and the Assistant Attorney General for the State of South Carolina (collectively, the "Multi-State Agencies") filed and issued a "Joint Notice Of Intent To Revoke Registration And Impose Administrative Penalty" (Joint Administrative Proceeding File Nos. Alabama: SC-2010-0016; Kentucky: 2010-AH-021; Mississippi: S-08-0050; South Carolina: 08011) (the "Multi-State Regulatory Complaint") against Defendants Morgan Asset

Management, Inc. (“Morgan Management”), Morgan Keegan & Company, Inc. (“Morgan Keegan”), James C. Kelsoe, Jr. (“Kelsoe”), Brian B. Sullivan (“Sullivan”), and Michele F. Wood (“Wood”);

(b) The Department of Enforcement of the Financial Industry Regulatory Authority (“FINRA”) filed a Complaint (Disciplinary Proceeding No. 2007011164501) (the “FINRA Complaint”) against Defendant Morgan Keegan; and

(c) The United States Securities And Exchange Commission (“SEC”) filed an Order Instituting Administrative And Cease-And-Desist Proceeding (“SEC Complaint”) against Defendants Morgan Management, Morgan Keegan, and Kelsoe.

Collectively, these are referred to as the “Regulatory Filings.”

2. Each of the Regulatory Filings concerns the same RMK Funds that were also purchased for and held in the Trusts and Custodial Accounts on whose behalf this action is brought.

3. The Regulatory Filings are based on an extensive and coordinated investigation of conduct of the Defendants, much of which is also the subject of this action.

4. The Regulatory Filings provide facts, information, and documents that were previously unavailable to the Plaintiffs and that bear directly upon the Plaintiffs’ claims and allegations. The Multi-State Regulatory Complaint, for example, attached over 130 exhibits, including previously unavailable e-mails, internal documents, affidavits, and transcripts of sworn testimony. In their pending Motion To Dismiss, the Defendants assert a lack of detail and specificity in the Plaintiffs’ allegations as an ostensible basis for dismissal. While the Plaintiffs are satisfied that their First Amended Complaint is sufficient, the new facts,

information, and documents provided by the Regulatory Filings allow the Plaintiffs to add specificity and detail to their claims and allegations in this action.

5. This action has not progressed past the initial pleading stage. No Defendant has filed an Answer. Discovery has not yet begun.

Rule 15 of the Federal Rules of Civil Procedure “reinforce[s] the principle that cases ‘should be tried on their merits rather than the technicalities of pleadings.’” *Moore v. City of Paducah*, 790 F.2d 557, 559 (6<sup>th</sup> Cir. 1986). (quoting *Tefft v. Seward*, 689 F.2d 637, 639 (6<sup>th</sup> Cir. 1982)). Rule 15(a)(2) provides that [t]he court should freely give leave [to amend] when justice so requires.”

*Equal Employment Opportunity Commission v. Taco Bell Corp.*, 575 F. Supp. 2d 884, 888 (W.D. Tenn. 2008); *Accord*, *Stewart v. Shelby Tissue, Inc.*, 189 F.R.D. 357, 359 (W.D. Tenn. 1999).

6. Newly available information is a recognized basis for allowing amendments to a complaint. *See e.g., Johnson v. Ventra Group, Incorporated*, 124 F.3d 197 (6<sup>th</sup> Cir. 1997); *Star Waste Services, LLC v. U. S. Waste, LLC*, 2008 WL 2066442 (E.D. Tenn. 2008).

7. Allowing the proposed amendment to the Complaint will result in no prejudice to the Defendants. “[T]he party opposing a motion to amend must make some significant showing of prejudice to prevail.” *Security Insurance Company of Hartford v. Kevin Tucker & Associates, Inc.*, 64 F.3d 1001, 1009 (6<sup>th</sup> Cir. 1995), *Accord*, *Wallace Hardware Company, Inc. v. Abrams*, 223 F.3d 382 (6<sup>th</sup> Cir. 2000). The Defendants can make no such showing.

For the above reasons, the Plaintiffs respectfully move the Court for an Order allowing the attached Second Amended Complaint.

Respectfully submitted,

**THOMASON, HENDRIX, HARVEY,  
JOHNSON & MITCHELL, PLLC**

s/ Albert C. Harvey

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 10, 2010, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following and/or served the following via U.S. Mail:

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